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Supreme Court, U. S.
FILED
MAY 18 1908
JAMES H. McKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 2

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

against

WEST VIRGINIA, DEFENDANT.

MOTION TO MODIFY DECREE OF REFERENCE.

Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HUGO,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

IN EQUITY. ORIGINAL, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

against

WEST VIRGINIA, DEFENDANT.

MOTION TO MODIFY DECREE OF REFERENCE.

To the Honorable the Supreme Court of the United States:

Now comes the State of West Virginia, the defendant herein, and availing itself of the leave granted by the interlocutory decree heretofore entered in this cause, respectfully moves the court to modify the said decree to the end that the same may be more definite and certain in the particulars hereinafter set forth:

First. By amending paragraph two to read as follows:

> "The territorial area and assessed valuation of the States of Virginia and West Virginia June 20, 1863, and the population thereof, with and without slaves, separately stated, including in the latter State the counties of Berkeley and Jefferson."

Second. By adding at the end of paragraph three thereof the words:

> "Prior to January 1, 1861."

Third. By amending paragraph four so as to read as follows:

> "The ordinary expenses of the government of Virginia since any of said debt was contracted and prior

to January 1, 1861, on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

Fourth. By amending paragraph five by striking out the words "fair estimated" where they occur in the first line, and inserting in lieu thereof the word "assessed" and by adding at the end thereof the words "during the same period," so that the same will read:

"5. And also on the basis of the assessed valuation of the property, real and personal, by counties, of the State of Virginia during the same period."

Fifth. By amending paragraph six by inserting before the word "period" in the second line thereof the word "said" and before the word "prior" in the third line thereof the word "and," and by striking out the words "the admission of the latter State into the Union" and inserting in lieu thereof the words "January 1, 1861," so that it will read:

"6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the said period and prior to January 1, 1861."

H. G. Conley

Attorney General.

J. G. CARLISLE,
JOHN C. SPOONER,
CHAS. E. HOGG,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
Of Counsel for Defendant.

[Endorsed:] Supreme Court of the United States. October term, 1907. In equity. Original No. 4. Commonwealth of Virginia, complainant, against West Virginia, defendant. Motion to modify interlocutory decree referring cause to master.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 2, Original.

VIRGINIA

vs.

WEST VIRGINIA.

COPIES AND EXTRACTS FROM CERTAIN STATUTES OF WEST VIRGINIA IN REFERENCE TO PROPERTY TRANSFERRED BY VIRGINIA TO WEST VIRGINIA.

Copy of act of Legislature of West Virginia, passed February 26, 1864, entitled "An act to provide for the recovery of certain claims transferred to this State by the State of Virginia."

"*Be it enacted by the Legislature of West Virginia:* Where any person who has heretofore acted as sheriff or collector of the revenue under the laws of the State of Virginia, within the territory which is now included in this State, has failed to account for and pay over the taxes and money, or any part thereof, with which he was chargeable, and the claim of the State of Virginia to the amount so in arrear has become the property of or been transferred to this State, it shall be the duty of the auditor to audit and state the account of such delinquent; and for that purpose the books of the commissioner of the revenue, lists of licenses, and delinquent lists,

now in the possession of any clerk of a circuit court or recorder, shall be delivered to the auditor, if he so require, and he shall carefully ascertain and state therefrom the amount with which the said delinquent is chargeable, and cause proper proceedings to be instituted and prosecuted for the recovery thereof from the said delinquent and his sureties, or any of them. The account so rendered and stated by the auditor shall be *prima facie* evidence of the amount due; and no judgment or pretended judgment obtained against the said delinquent or his sureties, or any of them, shall be a bar or defense to any proceedings under this act, except so far as such judgment or pretended judgment may have been actually collected or paid."

Passed February 26, 1864 (Acts 1864, p. 13).

"Joint resolution requiring certain duties of the auditor and Board of Public Works.

"*Resolved by the Legislature of West Virginia:* "1. That the auditor be and he is hereby directed to communicate with the auditor of the State of Virginia, and respectfully request from him a statement of the stock held by the State of Virginia in any of the banks of the State on the first day of January, 1861, then doing business within the boundaries of this State, showing the amount of stock, and in what banks.

"2. That the auditor be and he is hereby authorized to demand from any of the banks of this State, who were doing business within its boundaries on the first day of January, 1861, a full and detailed statement of the interest of the State of Virginia in each of said banks at that time, and what was the amount thereof; whether the same has been altered or changed in any wise, and whether any dividends have been paid on the same, and when, and how much.

"3. That the auditor do forthwith institute an inquiry into the matter of winding up the affairs of the Northwestern Bank of Virginia, as provided for by the act of the twenty-fifth February, 1867, what was done under the same by the commissioners appointed by virtue thereof, and whether any report was ever made by said commissioner; if so, when, and to whom?

"4. In case of the refusal of any of said banks to make any disclosures required of them touching the interest of this State therein, or to furnish the information herein desired,

the Board of Public Works are hereby directed to take all necessary legal steps in the premises."

Adopted February 20, 1871 (Acts 1871, p. 280, No. 25).

The following are extracts from the Code of West Virginia:

CHAPTER CXVII.

"SECTION 2. The auditor, under the direction of the Governor, and at the expense of the State, shall adopt proper measures to obtain accurate and authentic returns (where he is not already in possession of such returns) of all real estate in this State which, since the tenth day of March, eighteen hundred and thirty-two, has been returned delinquent for the non-payment of taxes to the State of Virginia, or to this State; except real estate, which, before the twentieth day of June, eighteen hundred and sixty-three, was returned delinquent for the non-payment of taxes to the State of Virginia, where the taxes, exclusive of interest or damages, do not exceed twenty dollars.

"3. Of the real estate mentioned in the preceding section, except therein excepted, and of all real estate hereafter returned delinquent for non-payment of taxes, a record shall be kept by the auditor in his office. And until sale thereof as hereinafter directed, any person having a right to redeem the same may pay into the treasury the taxes on any such real estate as hereinafter provided."

Acts 1872-3, p. 309.

Same chapter, section 41:

"All lands in this State, waste and unappropriated, or heretofore or hereafter for any cause forfeited or escheated to the State of Virginia, or this State, or purchased by either and become irredeemable, not redeemed, released, transferred or otherwise disposed of, the title thereto shall remain in this State till such sale as is hereinafter mentioned be made shall, by proceedings in the circuit court of the county in which the lands, or a part thereof, are situated, be sold to the highest bidder.

"The former owners of any such land shall be entitled to receive the excess of the sum for which the land may be sold over the taxes charged or chargeable thereon, or which if the land had not been forfeited, would have been charged or

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APR 16 1910
JAMES H. MCKENNEY
Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

Original No. 32

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

EXCEPTIONS BY WEST VIRGINIA

TO THE

REPORT OF SPECIAL MASTER

CHARLES E. LITTLEFIELD

NEWS-MAIL COMPANY
PUBLIC PRINTERS
Charleston, W. Va.

chargeable thereon, since the formation of this State with interest at the rate of twelve per centum per annum, and the cost of the proceedings, if his claim be filed in the circuit court that decrees the sale within two years thereafter."

Same, p. 333.

Same chapter, section 43:

"The proceeds of the real estate sold by a sheriff or collector under this chapter shall be paid into the treasury within the time prescribed in the eighth section of this chapter."

Same, p. 334.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

ORIGINAL No. 4.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

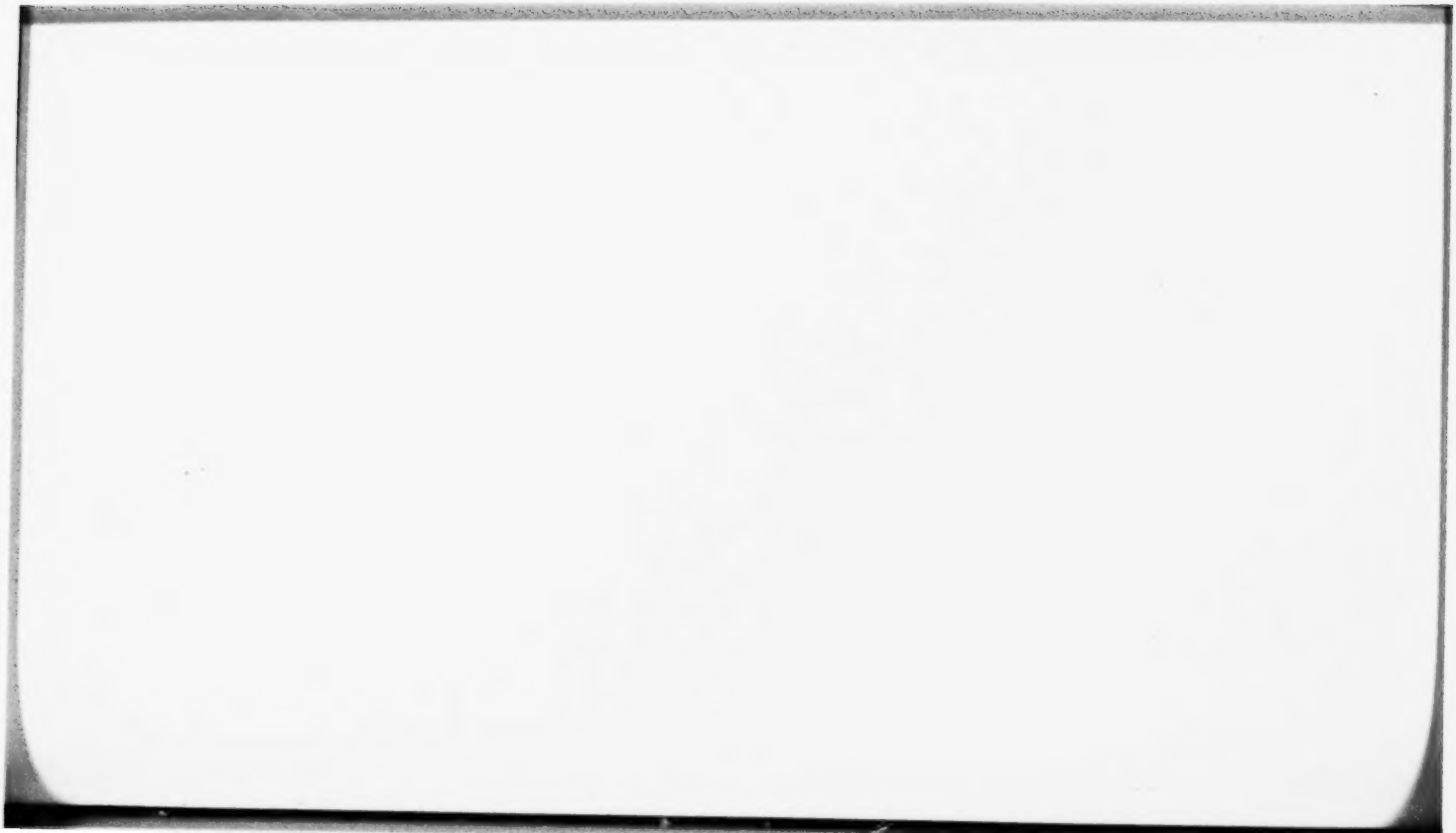
To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the State of West Virginia, by William G. Conley, Attorney General, humbly prays leave to file the annexed exceptions to the Report of the Honorable Charles E. Littlefield, Special Master, in the above cause, which report was filed in this Court on the 17th day of March, 1910.

And as in duty bound your petitioner will ever pray.

STATE OF WEST VIRGINIA,
By WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
CHAS. E. HOGG,
WM. M. O. DAWSON,
Of Counsel.



IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

ORIGINAL No. 4.

COMMONWEALTH OF VIRGINIA

v.

STATE OF WEST VIRGINIA.

EXCEPTIONS OF THE STATE OF WEST VIRGINIA TO THE REPORT OF CHARLES E. LITTLEFIELD, SPECIAL MASTER, FILED IN THE ABOVE CAUSE ON THE 17th DAY OF MARCH, 1910.

Now comes the State of West Virginia, by William G. Conley, her Attorney General, and excepts to the said report as to the following findings set out therein.

In specifying these exceptions this Defendant will set them out by paragraph as numbered in said decree of reference and in said report, and will refer to the item number and page in said report wherever it is possible to do so.

PARAGRAPH III. OF DECREE.

"3. All Expenditures made by the Commonwealth of Virginia within the Territory now constituting the State of West Virginia since any part of the Debt was contracted."

The Defendant, the State of West Virginia, excepts to the finding of the Special Master in reporting as expenditures made by the

Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted the following items:

Page 44. Item 2. Covington & Ohio Railroad, $1,146,460.42.

Page 44. Item 10. Kanawha Turnpike, $152,130.54.

Page 44. Item 11. Kanawha Turnpike, $2,593.92.

Page 44. Item 12. Kanawha Turnpike, $7,189.65.

Page 44. Item 13. Kanawha Turnpike, $80,955.28.

Pages 65-71. Item 14. Kanawha River Improvements, $59,572.36.

Page 72. Item 25. Brandonville, Kingwood & Evansville Road, $10,595.73.

Page 72. Item 28. Clarksburg & Buckhannon Turnpike, $19,259.36.

Page 72. Item 35. Kingwood & West Union Turnpike, $18,140.61.

Pages 75-6. Item 55. Surveys, $106,416.14. The Master finds and allows the sum of $60,873.19, and the exception is to this last amount found by the Master as an expenditure.

Page 80. Item 150. Loan to the Town of Bath, $2,500.00.

Said Defendant also excepts to said report for that said Master has found, under said Paragraph III, at page 83 of his said report, that the total of the expenditures made by the Commonwealth of Virginia within the territory of West Virginia amounts to $2,811,599.98, instead of the sum of $1,251,288.92.

PARAGRAPH IV. OF DECREE.

"4. Such Proportion of the Ordinary Expenses of the Government of Virginia since any of said debt was contracted, as was properly assignable to the Counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States."

The Defendant, the State of West Virginia, excepts to said report of the Special Master in that he finds that the following item is not a just credit against the total of what he finds to be the ordinary expenses of the State Government of Virginia, to wit:

Pages 114-16. Item No. 1. Tobacco Receipts, $353,123.96.

The said Defendant further excepts to said report in that he finds that the following items are part of the ordinary expenses of the State Government of Virginia during the period, from March 19, 1823, to December 31, 1860, inclusive, to wit:

Pages 118-19. Item 5. Maps, Board of Public Works, $11,446.48

Page 120. Item 7. International Exchanges, $2,836.19.

Page 121. Item 9. Printing Treasury Notes, $375.74.

Page 125. Item 16. Calling out Militia at Wheeling in 1836, $1,099.00.

Page 126. Item 18. Attorney General's fees for prosecuting Seldon, Withers & Company, $500.00.

Page 127. Part of Item 19. The item of $5,000.00 expended under the Act of February 14, 1844.

Page 128. Item 23. Sundry Board of Public Works Expenses, $36,728.50.

Pages 128-9. Item 24. Interest on public debt, aggregate, $18,574,747.84.

The next three items, found on pages 129 to 134, inclusive, of the report, are not numbered therein, but for convenience in designation we will call them herein by the serial numbers following item 24, to each of which three items the Defendant excepts, to wit:

Pages 129-31. Item 25. Harper's Ferry Raid, $251,763.65.

Pages 132-4. Item 26. Expended for Primary Schools, $2,400,331.11.

Page 134. Item 27. General expenses connected with surveys, $106,983.67.

The said Defendant further excepts to said report in that the Special Master, at page 135 of his said report, finds that the aggre-

gate amount of the ordinary expenses of the Commonwealth of Virginia for the period, March 19, 1823, to December 31, 1860, inclusive, was $40,274,896.70, instead of the sum of $18,529,960.56.

The said Defendant further excepts to the finding of the Special Master found on a page of his report not numbered, but which is shown by the context should be numbered 141, and which is in the following words:

> "I find that the method adopted by the plaintiff of ascertaining 'the average total population,' is the closest and most accurate approximation upon which the ordinary expenses can be apportioned to 'the average total population,' as the object to be ascertained, is the population in existence, at the time the ordinary expenses to be apportioned, were paid, and I therefore adopt the plaintiff's method."

And also excepts to the assignment of the ordinary expenses to West Virginia upon the said method, as set forth on pages 139 and 140 of said report.

PARAGRAPH V. OF DECREE.

> **"5. And also on the basis of the fair estimated valuation of the property, Real and Personal, by Counties, of the State of Virginia."**

The Defendant, the State of West Virginia, excepts to the finding of the Special Master as found on page 155 of his report, in that he finds that the fair estimated valuation of the real estate in the counties in Virgina on the 20th of June, 1863, was only $148,042,730.15.

The said Defendant also excepts to the ruling of the Special Master (page 152), admitting as competent evidence the testimony of J. B. Lightfoot and the schedules accompanying the same, concerning certain private sales and unofficial appraisements of various parcels of real estate in particular localities in the State of Virginia in the year 1863.

The said Defendant also excepts to the ruling of the Special Master (pages 153-5), admitting the opinions of the witnesses, Hunter, Scott, Branch, Wellford, Taylor, Hawes, Williams and McCabe, to show the alleged depreciation of real estate in the State of Virginia in the year 1863.

The said Defendant also excepts to the finding of the Special Master (page 156), wherein he finds that the fair estimated value of the real estate in the counties of West Virginia was on June 20th, 1863, the sum of $67,676,127.44.

The said Defendant also excepts to the finding of the Special Master on page 166 of his said report, that the sum of $11,108,300.13, assessed by the State of Virginia as income, was not part of her personal property.

PARAGRAPH VI. OF DECREE.

"6. All moneys paid into the treasury of the Commonwealth from the Counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union."

The Defendant, the State of West Virginia, excepts to the report of the Special Master in that he refuses to allow as a credit to the State of West Virginia as moneys paid into the Treasury of the Commonwealth of Virginia from the counties now forming West Virginia the following items, to wit:

Page 176. Item 7. Dividends from Banks in West Virginia counties, $786,666.98.

Page 176. Item 8. Dividends and interest from Turnpike Companies in West Virginia counties, $13,595.48.

Page 176. Item 9. Dividends from Bridge Companies in West Virginia, $6,028.51.

Page 176. Item 10. Dividends from Interstate Turnpike Companies (proportion), $1,355.92.

Said Defendant also excepts to said report because the Special Master finds, at page 179 of his report, that only the sum of $6,165,-

884.75 was paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during the period from March 19, 1823, to December 31, 1860, both inclusive, instead of the larger sum, to wit, $7,051,215.56, as shown by Joint Exhibit F-1, pages 805-6 of printed record.

PARAGRAPH VII. OF DECREE.

> "7. **The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items, and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the Restored Government of Virginia, together with the nature and description thereof.**"

The Defendant, the State of West Virginia, excepts to the finding of the Special Master on pages 189-193 of his report, that the value of the stock held by the State of Virginia in the Northwestern Bank of Virginia on the 20th day of June, 1863, was the sum of $427,250.00, and further excepts to said report in that he did not find the same was only $136,630.00.

The said Defendant further excepts to many other errors apparent upon the face of said report, and prays that said exceptions, and each of them, heretofore set out may be considered and sustained.

All of which is respectfully submitted.

WILLIAM G. CONLEY,
Attorney General.

JOHN G. CARLISLE,
JOHN C. SPOONER,
W. MOLLOHAN,
GEO. W. MCCLINTIC,
W. G. MATHEWS,
WM. M. O. DAWSON,
For West Virginia.